

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TRAVELERS PROPERTY CASUALTY )  
COMPANY OF AMERICA, )  
Plaintiff(s), ) No. C07-3459  
v. )  
FEDERATED MUTUAL INSURANCE )  
COMPANY, )  
Defendant(s). )  
\_\_\_\_\_  
**ORDER SCHEDULING JURY TRIAL  
AND PRETRIAL MATTERS**

Following the Case Management Conference, IT IS **HEREBY**  
**ORDERED** that the Case Management Statement is adopted, except  
as expressly modified by this Order. It is further **ORDERED**  
that:

## 1. DATES

Trial Date: Monday, Monday, 01/12/2009, 5 days

Pretrial Conference: **Tuesday, 12/23/2008, 4:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 08/13/2008**

Last Day for Expert Discovery: **Friday, 10/10/2008**

Last Day for Expert Disclosure: **Friday, 10/03/2008**

1 Close of Non-expert Discovery: **Tuesday, 09/02/2008**  
2 Plaintiff shall file a document setting forth whether it  
3 intends to waive its right to a jury trial by **Wednesday,**  
4 **01/02/2008.**

5 2. **DISCLOSURE AND DISCOVERY**

6 The parties are reminded that a failure to voluntarily  
7 disclose information pursuant to Federal Rule of Civil  
8 Procedure 26(a) or to supplement disclosures or discovery  
9 responses pursuant to Rule 26(e) may result in exclusionary  
10 sanctions. Thirty days prior to the close of non-expert  
11 discovery, lead counsel for each party shall serve and file a  
12 certification that all supplementation has been completed.

13 In the event a discovery dispute arises, **lead counsel**  
14 for each party shall meet in person or, if counsel are  
15 outside the Bay Area, by telephone and make a good faith  
16 effort to resolve their dispute. Exchanging letters or  
17 telephone messages about the dispute is insufficient. The  
18 Court does not read subsequent positioning letters; parties  
19 shall instead make a contemporaneous record of their meeting  
20 using a tape recorder or a court reporter.

21 In the event they cannot resolve their dispute, the  
22 parties must participate in a telephone conference with the  
23 Court **before** filing any discovery motions or other papers.  
24 The party seeking discovery shall request a conference in a  
25 letter **filed electronically** not exceeding two pages (with no  
26 attachments) which briefly explains the nature of the action  
27 and the issues in dispute. Other parties shall reply in  
28 similar fashion within two days of receiving the letter

1 requesting the conference. The Court will contact the  
2 parties to schedule the conference.

3 . MOTIONS

4 Consult Civil Local Rules 7-1 through 7-5 and this  
5 Court's standing orders regarding motion practice. Motions  
6 for **summary judgment** shall be accompanied by a statement of  
7 the material facts not in dispute supported by citations to  
8 admissible evidence. The parties shall file a joint  
9 statement of undisputed facts where possible. If the parties  
10 are unable to reach complete agreement after meeting and  
11 conferring, they shall file a joint statement of the  
12 undisputed facts about which they do agree. Any party may  
13 then file a separate statement of the additional facts that  
14 the party contends are undisputed. A party who without  
15 substantial justification contends that a fact is in dispute  
16 is subject to sanctions.

17 A Chambers copy of all briefs shall be submitted on a  
18 diskette formatted in WordPerfect 6.1, 8, 9, 10 or 13  
19 (Windows), or may be e-mailed to the following address:  
20 bzpo@cand.uscourts.gov.

21 . MEDIATION

22 By agreement of the parties, this matter has been  
23 assigned for mediation. The parties shall promptly notify  
24 the Court whether the case is resolved in mediation.

25 . SETTLEMENT

26 This case has been referred for assignment to a  
27 Magistrate Judge to conduct a settlement conference in the  
28 event the case is not resolved at the Early Neutral

1 Evaluation. Counsel will be contacted by that judge's  
2 chambers with a date and time for the conference.

3       **6. PRETRIAL CONFERENCE**

4           Not less than thirty days prior to the date of the  
5 pretrial conference, the parties shall meet and take all  
6 steps necessary to fulfill the requirements of this Order.

7           Not less than twenty days prior to the pretrial  
8 conference, the parties shall: (1) serve and file a joint  
9 pretrial statement, containing the information listed in  
10 **Attachment 1**, and a proposed pretrial order; (2) serve and  
11 file trial briefs, Daubert motions, motions in limine,  
12 proposed findings of fact and conclusions of law, and  
13 statements designating excerpts from discovery that will be  
14 offered at trial (specifying the witness and page and line  
15 references); (3) exchange exhibits, agree on and number a  
16 joint set of exhibits and number separately those exhibits to  
17 which the parties cannot agree; (4) deliver all marked trial  
18 exhibits directly to the courtroom clerk, Ms. Scott; (5)  
19 deliver one extra set of all marked exhibits directly to  
20 Chambers; and (6) submit all exhibits in three-ring binders.  
21 Each exhibit shall be marked with an exhibit label as  
22 contained in **Attachment 2**. The exhibits shall also be  
23 separated with correctly marked side tabs so that they are  
24 easy to find.

25           No party shall be permitted to call any witness or offer  
26 any exhibit in its case in chief that is not disclosed at  
27 pretrial, without leave of Court and for good cause.

28           Lead trial counsel for each party shall meet and confer

1 in an effort to resolve all disputes regarding anticipated  
2 testimony, witnesses and exhibits. All Daubert motions,  
3 motions in limine, and objections will be heard at the  
4 pretrial conference. Not less than ten days prior to the  
5 pretrial conference, the parties shall serve and file any  
6 objections to witnesses or exhibits or to the qualifications  
7 of an expert witness. Daubert motions and motion in limine  
8 shall be filed and served not less than twenty days prior to  
9 the conference. Oppositions shall be filed and served not  
10 less than ten days prior to the conference. There shall be  
11 no replies.

12 Not less than twenty days prior to the pretrial  
13 conference the parties shall serve and file requested voir  
14 dire questions, jury instructions, and forms of verdict. The  
15 following jury instructions from the *Manual of Model Civil*  
16 *Jury Instructions for the Ninth Circuit* (1997 ed.) will be  
17 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19,  
18 2.11, 3.1-3.3. Do not submit a copy of these instructions.  
19 Counsel shall submit a joint set of case specific  
20 instructions. Any instructions on which the parties cannot  
21 agree may be submitted separately. The Ninth Circuit Manual  
22 should be used where possible. Each requested instruction  
23 shall be typed in full on a separate page with citations to  
24 the authority upon which it is based. Proposed jury  
25 instructions taken from the Ninth Circuit Manual need only  
26 contain a citation to that source. Any modifications made to  
27 proposed instructions taken from a manual of model  
28 instructions must be clearly indicated. In addition, all

1 proposed jury instructions should conform to the format of  
2 the Example Jury Instruction attached to this Order. Not  
3 less than ten days prior to the pretrial conference, the  
4 parties shall serve and file any objections to separately  
5 proposed jury instructions.

6 Jury instructions that the Court has given in prior  
7 cases may be downloaded from the Northern District website at  
8 <http://www.cand.uscourts.gov>. (Instructions are located on  
9 the "Judge Information" page for Magistrate Judge Zimmerman.)  
10 The Court will generally give the same instructions in cases  
11 involving similar claims unless a party establishes, with  
12 supporting authorities, that the instruction is no longer  
13 correct or that a different instruction should be given.  
14 CACI instructions generally will be given instead of BAJI  
15 instructions.

16 All proposed jury instructions, Daubert motions, motions  
17 in limine, forms of verdict and trial briefs shall be  
18 accompanied by a floppy diskette containing a copy of the  
19 document formatted in WordPerfect 6.1, 8, 9, 10 or 13  
20 (Windows), or may be e-mailed to the following address:  
21 bzpo@cand.uscourts.gov.

22 At the time of filing the original with the Clerk's  
23 Office, two copies of all documents (but only one copy of the  
24 exhibits) shall be delivered directly to Chambers (Room 15-  
25 6688). Chambers' copies of all pretrial documents shall be  
26 three-hole punched at the side, suitable for insertion into  
27 ///

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1 standard, three-ring binders.

2 Dated: October 23, 2007

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5 Bernard Zimmerman  
United States Magistrate Judge

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1                   **EXAMPLE PROPOSED JURY INSTRUCTION**  
2                   **For Chambers of Magistrate Judge Zimmerman**

3                   A proposed jury instruction should contain the following  
4                   elements in the following order: (1) the name of the party  
5                   submitting the instruction; (2) the title of the instruction;  
6                   (3) the text of the instruction; (4) the authority for the  
7                   instruction; (5) blank boxes for the Court to note whether it  
8                   gives the instruction, refuses to give it, or gives it as  
9                   modified. The following proposed instruction contains these  
10                  elements.

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11                  \_\_\_\_\_'s Proposed Instruction No. \_\_\_\_\_.  
12                  (Party)

13                  [Title]

14                  [Text]

15  
16  
17  
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19  
20  
21  
22  
23                  [Authority]

24  
25                  \_\_\_\_ GIVEN        \_\_\_\_ REFUSED        \_\_\_\_ GIVEN AS MODIFIED

1                   **ATTACHMENT 1**

2                   The parties shall file a joint pretrial conference  
3 statement containing the following information:

4                   **(1) The Action.**

- 5                   (A) Substance of the Action. A brief  
6 description of the substance of  
7 claims and defenses which remain  
8 to be decided.  
9  
9                   (B) Relief Prayed. A detailed  
10 statement of each party's  
11 position on the relief claimed,  
12 particularly itemizing all  
13 elements of damages claimed as  
14 well as witnesses, documents or  
15 other evidentiary material to be  
16 presented concerning the amount  
17 of those damages.

18                   **(2) The Factual Basis of the Action.**

- 19                   (A) Undisputed Facts. A plain and  
20 concise statement of all  
21 relevant facts not reasonably  
22 disputable, as well as which  
23 facts parties will stipulate for  
24 incorporation into the trial  
25 record without the necessity of  
26 supporting testimony or  
27 exhibits.  
28  
28                   (B) Disputed Factual Issues. A plain  
29 and concise statement of all  
30 disputed factual issues which  
31 remain to be decided.  
32  
32                   (C) Agreed Statement. A statement  
33 assessing whether all or part of  
34 the action may be presented upon  
35 an agreed statement of facts.  
36  
36                   (D) Stipulations. A statement of  
37 stipulations requested or  
38 proposed for pretrial or trial  
39 purposes.

40                   **(3) Trial Preparation.**

41                   A brief description of the efforts the parties have made  
42 to resolve disputes over anticipated testimony, exhibits and  
43 witnesses.

- 1                             (A) Witnesses to be Called. In lieu  
2                             of FRCP 26(a)(3)(A), a list of  
3                             all witnesses likely to be  
4                             called at trial, other than  
5                             solely for impeachment or  
6                             rebuttal, together with a brief  
7                             statement following each name  
8                             describing the substance of the  
9                             testimony to be given.  
10                            (B) Estimate of Trial Time. An  
11                             estimate of the number of court  
12                             days needed for the presentation  
13                             of each party's case, indicating  
14                             possible reductions in time  
15                             through proposed stipulations,  
16                             agreed statements of facts, or  
17                             expedited means of presenting  
18                             testimony and exhibits.  
19                            (C) Use of Discovery Responses. In  
20                             lieu of FRCP 26(a)(3)(B), cite  
21                             possible presentation at trial  
22                             of evidence, other than solely  
23                             for impeachment or rebuttal,  
24                             through use of excerpts from  
25                             depositions, from interrogatory  
26                             answers, or from responses to  
27                             requests for admission. Counsel  
28                             shall state any objections to  
                               use of these materials and that  
                               counsel has conferred respecting  
                               such objections.  
1                            (D) Further Discovery or Motions. A  
2                             statement of all remaining  
3                             motions, including motions in  
4                             limine.

5                            (4) **Trial Alternatives and Options.**

- 6                            (A) Settlement Discussion. A  
7                             statement summarizing the status  
8                             of settlement negotiations and  
9                             indicating whether further  
10                            negotiations are likely to be  
11                             productive.  
12                            (B) Amendments, Dismissals. A  
13                             statement of requested or  
14                             proposed amendments to pleadings  
15                             or dismissals of parties, claims  
16                             or defenses.  
17                            (C) Bifurcation, Separate Trial of

1                   Issues. A statement of whether  
2 bifurcation or a separate trial  
of specific issues is feasible  
and desired.

3                   **(5) Miscellaneous.**

4                   Any other subjects relevant to the trial of the action,  
5 or material to its just, speedy and inexpensive determination.

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1 **ATTACHMENT 2**

2 **USDC**  
3 Case No. CV07-03459 BZ  
4 **JOINT** Exhibit No. \_\_\_\_\_  
5 Date Entered \_\_\_\_\_

6 Signature \_\_\_\_\_

7 **USDC**  
8 Case No. CV07-03459 BZ  
9 **JOINT** Exhibit No. \_\_\_\_\_  
10 Date Entered \_\_\_\_\_

11 Signature \_\_\_\_\_

12 **USDC**  
13 Case No. CV07-03459 BZ  
14 **JOINT** Exhibit No. \_\_\_\_\_  
15 Date Entered \_\_\_\_\_

16 Signature \_\_\_\_\_

17 **USDC**  
18 Case No. CV07-03459 BZ  
19 **JOINT** Exhibit No. \_\_\_\_\_  
20 Date Entered \_\_\_\_\_

21 Signature \_\_\_\_\_

22 **USDC**  
23 Case No. CV07-03459 BZ  
24 **PLNTF** Exhibit No. \_\_\_\_\_  
25 Date Entered \_\_\_\_\_

26 Signature \_\_\_\_\_

27 **USDC**  
28 Case No. CV07-03459 BZ  
29 **PLNTF** Exhibit No. \_\_\_\_\_  
30 Date Entered \_\_\_\_\_

31 Signature \_\_\_\_\_

32 **USDC**  
33 Case No. CV07-03459 BZ  
34 **PLNTF** Exhibit No. \_\_\_\_\_  
35 Date Entered \_\_\_\_\_

36 Signature \_\_\_\_\_

37 **USDC**  
38 Case No. CV07-03459 BZ  
39 **PLNTF** Exhibit No. \_\_\_\_\_  
40 Date Entered \_\_\_\_\_

41 Signature \_\_\_\_\_

42 **USDC**  
43 Case No. CV07-03459 BZ  
44 **DEFT** Exhibit No. \_\_\_\_\_  
45 Date Entered \_\_\_\_\_

46 Signature \_\_\_\_\_

47 **USDC**  
48 Case No. CV07-03459 BZ  
49 **DEFT** Exhibit No. \_\_\_\_\_  
50 Date Entered \_\_\_\_\_

51 Signature \_\_\_\_\_

52 **USDC**  
53 Case No. CV07-03459 BZ  
54 **DEFT** Exhibit No. \_\_\_\_\_  
55 Date Entered \_\_\_\_\_

56 Signature \_\_\_\_\_

57 **USDC**  
58 Case No. CV07-03459 BZ  
59 **DEFT** Exhibit No. \_\_\_\_\_  
60 Date Entered \_\_\_\_\_

61 Signature \_\_\_\_\_